

124 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Arizona Public Service Company

Docket No. ER07-1142-000

ORDER CONDITIONALLY APPROVING UNCONTESTED SETTLEMENT

(Issued July 25, 2008)

1. On May 29, 2008, Arizona Public Service Company (APS) filed an Offer of Settlement and Settlement Agreement (settlement) on behalf of itself in the above-mentioned docket. Initial comments were due on June 18, 2008, and reply comments were due on June 30, 2008. On June 18, Commission Trial Staff submitted initial comments in support of the settlement. No other comments were filed. The settlement was certified to the Commission as uncontested on July 2, 2008.¹
2. The subject settlement resolves all of the issues set for hearing and settlement judge procedures in the above-mentioned docket.² The settlement implements a number of revised rates, terms and conditions to APS' Open Access Transmission Tariff. Specifically, the settlement revises the rate formula and its implementation protocols, including revisions to the return on equity, the treatment of certain components of APS' rate base, and the annual review procedures.
3. The settlement is fair and reasonable and in the public interest and is hereby approved. The revised tariff sheets are accepted for filing as designated and made effective consistent with such designations and the terms of the settlement. Refunds and adjustments shall be made pursuant to the settlement. The

¹ *Arizona Pub. Serv. Co.*, 124 FERC ¶ 63,002 (2008).

² *Arizona Pub. Serv. Co.*, 120 FERC ¶ 61,262 (2007).

Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. Section 3.7 of the settlement states that the standard of review for any modifications to this settlement that are not agreed to by all the parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine.³ In light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the settlement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the "most stringent standard permissible under applicable law."

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with a separate joint statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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KELLY and WELLINGHOFF, Commissioners, dissenting in part:

The instant settlement states that the “public interest” standard of review will apply to any modification to the settlement that is not agreed to by all of the settling parties.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*² and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Suede G. Kelly
Commissioner

Jon Wellinghoff
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).